



28 February, 1985

Pat Nucciarone, Esq.  
Hannoch, Weisman et al.  
4 Becker Farm Road  
Roseland, New Jersey 07068

Re: Duane Marine Salvage Corp. site, Respondent Two Guys

Dear Mr. Nucciarone:

As I said I would when we spoke by telephone on February 12, I am sending you two sets of information that could be of use to your client, Vornado Properties, in its search for information concerning the connection between its retail operation, Two Guys, and the Duane Marine hazardous waste disposal facility.

First, I am enclosing three samples of documentation that is sufficient to establish a claim that substances generated by a respondent to an administrative order issued under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and sent for disposal at a hazardous waste disposal site were not "hazardous substances" under the CERCLA definition at section 101(14) of the Act.

Please note that satisfactory documentation of a claim of this nature consists of (1) manifests with information that is consistent with such a claim (in particular, you should check the waste type and the hazard ID); (2) other records, such as work orders and invoices prepared at the time of the contract with the waste disposal facility; (3) descriptions of the waste generation process which yielded the waste in question; and (4) affidavits given by employees with sufficient knowledge of the processes and transactions at issue, or by an officer of the corporation, or both, where a sworn statement is needed to supplement documentary information with greater detail.

Second, I am sending information from EPA's files that can help you to focus your document search. To date, we have found 7 manifests that record as many transactions when Duane Marine came to a Two Guys store at 174 Passaic Avenue in Passaic, New Jersey, and took away what was probably waste oil for disposal.

We know that Two Guys retail facilities normally had an automotive department, and so the quantities reported in the manifests are not surprising.

It should be noted that used motor oil is normally contaminated with, inter alia, lead, which is a hazardous substance under CERCLA. While petroleum is exempted specifically from the ambit of CERCLA, petroleum products contaminated with hazardous substances are not.

EPA's records consist of manifests reporting the following transactions:

- (1) Manifest No. 48134  
Nov. 29, 1978  
19 55-gallon drums of solid oil sludge, flammable
- (2) Manifest No. 48109  
Jan. 9, 1979  
4400 gal. Oil and oil sludges, emulsions (code #
- (3) Manifest No. 48110  
Jan. 9, 1979 (same date as above)  
4400 gal. #15 (same amount as above)
- (4) Manifest No. 48107  
Jan. 10, 1979  
4500 gal. #15
- (5) Manifest No. 48108  
Jan. 11, 1979  
4400 gal. #15
- (6) Manifest No. 48114  
Jan. 11, 1979  
2500 gal. #15
- (7) Manifest No. 48113  
Jan. 16, 1979  
600 gal. #15

Various signatures appear on these manifests. One looks like a "Michael S. Salaline"; others look like "Pete Sienar," "Frank Tomosko," and "Nicholas Russo, Maintenance Supervisor."

These manifests are very hard to read. There is little point in making a photocopy. If you want to come to our offices, we would make the manifests available to you for examination.

We hope that you will be able to find the relevant company records, with these facts as a basis for a more specific document search. We realize the difficulty inherent in a search through the records of an operation that has been out of business for a number of years.

We appreciate your cooperation in this matter.

Sincerely yours,

Margaret Thompson  
Law Clerk  
Waste and Toxic Substances Branch

Enclosures

bcc: Janet Feldstein, 2ERRD